

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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ALF RENTAL COMPANY, INC.,

Docket No.: 07 CV 3148 (LAK)

Plaintiff,

vs.

BUILDERS RESOURCE, INC., D'ONOFRIO  
GENERAL CONTRACTORS CORP.,  
CONSOLIDATED EDISON OF NEW YORK, INC.,  
TERRA DINAMICA, LLC, CORESLAB  
STRUCTURES, and NICOLSON CONSTRUCTION  
CO.,

Defendants,

-----X  
BUILDERS RESOURCE, INC.,

**ANSWER TO CROSS  
CLAIMS OF DEFENDANT  
BUILDERS RESOURCE, INC.  
AND JURY DEMAND**

Third-Party Plaintiff,

-vs-

BAY CRANE SERVICE, INC.,

Third-Party Defendant.

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Defendant Coreslab Structures (CONN), Inc. ("Coreslab"), by way of answer to the cross  
claims of defendant Builders Resource, Inc. ("BRI"), says:

AS TO THE FIRST CROSS CLAIM ASSERTED BY BRI

1. Coreslab lacks knowledge or information sufficient to form a belief as to the truth of  
¶64 of BRI's cross claim.
2. Admits ¶65.
3. Denies ¶66.

4. Denies ¶67.

5. Denies ¶68.

WHEREFORE, Coreslab demands judgment dismissing BRI's First Cross Claim with prejudice, together with costs of suit, reasonable attorneys' fees allowable by law, and such other and further relief as the court may award.

AS TO THE SECOND CROSS CLAIM ASSERTED BY BRI

6. Coreslab repeats its answers as to the preceding allegations contained in BRI's ¶'s 64-68 as if set forth at length.

7. Regarding ¶71, admits that such a contract was made, the terms of which speak for themselves. Otherwise denied.

8. Regarding ¶72, admits that BRI performed work under the contract, but denies that it was of the amount or value alleged, denies that it was extra work in whole or part, and denies that BRI satisfied all conditions to and/or requirements of the contract.

9. Regarding ¶73, admits that it has not paid the amount claimed by BRI, but denies that such amount is due or owing and otherwise denies BRI's proper or full performance.

10. Denies ¶74.

11. Denies ¶75.

12. Denies ¶76.

WHEREFORE Coreslab demands judgment dismissing BRI's Second Cross Claim with prejudice, together with costs of suit, reasonable attorneys' fees allowable by law, and such other and further relief as the court may award.

AS TO THE THIRD CROSS CLAIM

13. Coreslab repeats its answers as to the preceding allegations contained in BRI's ¶'s 70 through 76 as if set forth at length.

14. Denies ¶78.

15. Regarding ¶79, admits that it has not paid the amount claimed by BRI, but denies that such amount is due or owing and otherwise denied.

16. Denies ¶80.

WHEREFORE Coreslab demands judgment dismissing BRI's Third Cross Claim with prejudice, together with cost of suit, reasonable attorneys' fees allowable by law, and such other and further relief as the court may award.

FIRST SEPARATE DEFENSE

BRI's cross claims fail to state claims upon which relief may be granted.

SECOND SEPARATE DEFENSE

Coreslab is entitled to set off and/or to recoup against BRI's cross claims the amounts or damages due to Coreslab from BRI, as further described in Coreslab's several cross claims against BRI.

THIRD SEPARATE DEFENSE

BRI has failed to satisfy conditions to and/or requirements for payment under the parties' contract, such as but not limited to BRI's resolution of all debts, obligations, claims, liens, or the like incurred in connection with its project work.

FOURTH SEPARATE DEFENSE

BRI is not entitled to the amount claimed by it, in whole or part, by reason of payment, accord and satisfaction, waiver, release, and/or estoppel.

FIFTH SEPARTE DEFENSE

BRI is not entitled to the amount claimed by it, in whole or part, due to the inclusion therein of charges for purported extra work which was not extra.

SIXTH SEPARATE DEFENSE

BRI failed to mitigate its alleged damages.

SEVENTH SEPARATE DEFENSE

Coreslab's agreement to pay for certain alleged extra/change order work is voidable by reason of mistake, fraud, or the like. In particular, BRI submitted applications for payments with underlying supporting documentation to Coreslab and upon which Coreslab relied which included, among other things, overtime hours and labor costs which were represented to be accurate and truthful and upon which Coreslab relied and which later audits showed to have been either not in fact performed or incurred or was unable to be substantiated and confirmed.

EIGHTH SEPARATE DEFENSE

If any agreement as alleged in the First Cross Claim were made – which is denied, it is unenforceable under the Statute of Frauds.

NINTH SEPARATE DEFENSE

If any agreement as alleged in the First Cross Claim were made – which is denied, BRI materially breached it, excusing Coreslab's performance.

TENTH SEPARATE DEFENSE

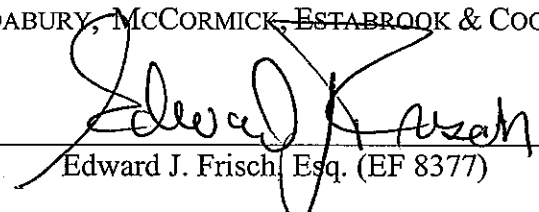
If any agreement as alleged in the First Cross Claim were made – which is denied, Coreslab was excused from performing it in whole or part on grounds such as but not limited to mistake, illegality, impossibility, or impracticality.

JURY DEMAND

Coreslab demands a jury for all counts triable by jury.

LINDABURY, MCCORMICK, ESTABROOK & COOPER, P.C.

By: \_\_\_\_\_

  
Edward J. Frisch, Esq. (EF 8377)

*Attorneys for Defendant Coreslab Structures (CONN), Inc.*  
26 Broadway, Suite 2300  
New York, New York 10004  
(212) 742-3390

Dated: New York, New York  
March 20, 2008